

the Administrative Law Judge shall weigh the harm resulting from disclosure against the benefits of disclosure. Good cause shall only be established upon a showing that the person seeking the protective order will suffer a clearly defined and serious injury if the order is not issued, provided, however, that any such injury shall be balanced against the public's right of access to judicial records. No protective order shall be granted that will prevent the Division of Enforcement or any respondent from adequate presenting its case.

(d) *Attendance and mileage fees.* Persons summoned to testify either by deposition or at a hearing under requirement of subpoena are entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. Fees and mileage are paid by the party at whose instance the persons are called.

(e) *Service of subpoenas—(1) How effected.* Service of a subpoena upon a party shall be made in accordance with § 10.12(a) of these rules except that only one copy of a subpoena need be served. Service of a subpoena upon any other person shall be made by delivering a copy of the subpoena to him as provided in paragraphs (e)(2) or (e)(3) of this section, as applicable, and by tendering to him or her the fees for one day's attendance and mileage as specified in paragraph (d) of this section. When the subpoena is issued at the instance of the Commission, fees and mileage need not be tendered at the time of service.

(2) *Service upon a natural person.* Delivery of a copy of a subpoena and tender of the fees to a natural person may be effected by

- (i) Handing them to the person;
- (ii) Leaving them at his office with the person in charge thereof or, if there is no one in charge, by leaving them in a conspicuous place therein;
- (iii) Leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;
- (iv) Mailing them by registered or certified mail to him at his last known address; or

(v) Any other method whereby actual notice is given to him and the fees and mileage are timely made available.

(3) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees and mileage may be effected by

(i) Handing them to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;

(ii) Mailing them by registered or certified mail to any such representative at his last known address; or

(iii) Any other method whereby actual notice is given to any such representative and the fees and mileage are timely made available.

(f) *Enforcement of subpoenas.* Upon failure of any person to comply with a subpoena issued at the request of a party, that party may petition the Commission in its discretion to institute an action in an appropriate U.S. District Court for enforcement of that subpoena. When instituting an action to enforce a subpoena requested by the Division of Enforcement, the Commission, in its discretion, may delegate to the Director of the Division or any Commission employee designated by the Director and acting under his or her direction, or to any other employee of the Commission, authority to serve as the Commission's counsel in such subpoena enforcement action.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995; 63 FR 55794, Oct. 19, 1998; 63 FR 68829, Dec. 14, 1998; 64 FR 30903, June 9, 1999]

#### § 10.69 Reopening hearings.

Any party may petition the Administrative Law Judge to reopen a hearing to adduce additional evidence at any time prior to issuance of the initial decision. The petition shall show that the evidence sought to be adduced is relevant and material and that there were reasonable grounds for failure to adduce such evidence at the time of the original hearing.